

OGC HAS REVIEWED.

17 May 1954

Personnel 10-1

MEMORANDUM FOR: Deputy Chief, Finance Division

THROUGH : DD/P-Admin.

REFERENCES : a. Memorandum from DD/Admin. to OGC, dated 25 Feb. 54
b. Memorandum from DD/P-Admin. to OGC, dated 4 Feb. 54.
c. Memorandum from OGC to Finance Div. & DD/Admin., dated 22 March 1954

1. The referenced memoranda raise the question of whether or not annual leave which has already been taken as annual leave may be converted into leave without pay at some subsequent date.

2. There have been reviewed carefully the referenced memoranda, including the memoranda submitted by the Deputy Chief, Finance Division, dated 25 April 1954, particularly with respect to the fundamental question of leave without pay. There is no clear-cut statutory definition or discussion of leave without pay. The conception of LWOP has become a part of Government administration through custom and usage. The Civil Service Commission and the Federal Personnel Council have considered this subject, and the Federal Personnel Manual, on Page 11-9, provides "the authorization of leave without pay is a matter of administrative discretion." Further, the Federal Personnel Manual furnishes a set of standards with reference to which the administrative discretion should be exercised. These standards are described by the manual as being nonregulatory in character and not mandatory. The manual provides in part as follows:

"Each request for leave without pay should be examined closely to assure that the values to the Government or the serious needs of the employee are sufficient to offset the costs and administrative inconveniences to the Government which result from the retention of an employee in a leave-without-pay status."

3. No statute has been found which prohibits the retroactive adjustment of annual leave taken by an employee to leave without pay provided the appropriate refunds are made. The regulations of the Agency authorized Chiefs of Mission to grant leave without pay, and in the absence of any statutory or regulatory provisions prohibiting retroactive conversion of leave, this office sees no legal objection to such action as was taken.

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4. The previous opinion of this office dated 22 March 1954 pointed out such regulations and laws as seemed to bear on the problem. That opinion went further to indicate that the policy prescribing retroactive conversions appeared to be a sound one in view of all of the factors concerned. However, we should like to make it clear that the determination to approve retroactive conversions is an administrative one to which this office can interpose no legal objection in the absence of an Agency policy expressed in regulations limiting such administrative discretion.

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Deputy General Counsel

cc DD/P-Admin
EE Div.
AD/P

OGC/JSW:mm

1 - subject ✓
1 - chrono
1 - legal
1 - vital

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